PRO SE APPELLANT:

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IN THE
COURT OF APPEALS OF INDIANA

JOHN W. MCANELLY, JR.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 36A01-0511-PC-527
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause Nos. 36C01-0203-FD-66 & 36C01-0202-FD-49

February 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

John W. McAnelly, Jr., pro se, appeals the denial of his motion to correct erroneous sentence. Because the claim in McAnelly's motion to correct sentence requires consideration of matters outside the face of the sentencing judgment, it is not appropriate for such a motion. We therefore affirm the trial court.

Facts and Procedural History

In March 2002, the State charged McAnelly with four counts of Class D felony check fraud under Cause No. 36C01-0203-FD-66. Also in March 2002, the State charged McAnelly with two counts of Class D felony check fraud under Cause No. 36C01-0202[1]-FD-49. Thereafter, the State and McAnelly entered into a plea agreement whereby McAnelly pled guilty to the six counts of Class D felony check fraud under both cause numbers, and the trial court sentenced him to the presumptive term[2] of one and one-half years on each count, to be served consecutively, for an aggregate term of nine years.[3]

In August 2003, McAnelly filed a Petition for Post-Conviction Relief under both cause numbers raising claims of: (1) erroneous sentence; (2) mistake in charge; and (3) false sentence and official misconduct. The trial court denied the petition, and McAnelly did not appeal.

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[1] We note that in his filings with the trial court, McAnelly refers to this cause number as 36C01-0203-FD-49. However, because the trial court uses "0202" in its records, we use the same.

[2] The Indiana sentencing statutes now provide for "advisory" rather than "presumptive" sentences, and Indiana Code § 35-50-2-7(a) has been amended to reflect this change.

[3] Although the trial court's Order shows that it entered judgment of conviction and sentenced McAnelly on six counts of check fraud, *see* Appellee's App. p. 15-16, the Appellee's Appendix only contains the charging informations for four of these counts. In addition, the Appellee's Appendix only contains the CCS for Cause No. 36C01-0203-FD-66. Apparently, the Appellant's Appendix was lost, and the State filed an Appellee's Appendix to replace it.

In September 2005, McAnelly, pursuant to Indiana Code § 35-38-1-15, filed a Motion to Correct Erroneous Sentence under both cause numbers. Specifically, he alleged that his nine-year sentence was "facially defective" because the six counts of check fraud arose out of a single episode of criminal conduct. Appellee's App. p. 33. The trial court denied this motion, and McAnelly, pro se, now appeals.

Discussion and Decision

McAnelly contends that the trial court erred in denying his motion to correct erroneous sentence. McAnelly's motion to correct sentence derives from Indiana Code § 35-38-1-15, which provides:

> If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

The purpose of this statute "is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence." *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (quoting *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)). As such, a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. *Id*. at 787. Claims that require consideration of proceedings before, during, or after trial may not be presented by way of a motion to correct sentence. *Id*.

Here, McAnelly argues that the six counts of check fraud arise out of a single episode of criminal conduct and, therefore, Indiana Code § 35-50-1-2 restricts the length

of his sentence to four years.[4] "An 'episode of criminal conduct' means offenses or a connected series of offenses that are closely related in time, place, and circumstance." I.C. § 35-50-1-2(b). That is, an episode means an occurrence or connected series of occurrences and developments that may be viewed as distinctive and apart although part of a larger or more comprehensive series. *Johnican v. State*, 804 N.E.2d 211, 217 (Ind. Ct. App. 2004). The singleness of a criminal episode should be based upon whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to the details of the other charge. *Id.* To determine whether the six counts of check fraud are closely related in time, place, and circumstance, it is necessary to examine the charging informations for each of the six counts and the specific facts underlying each count. This requires consideration of matters outside the face of the sentencing judgment. As a result, McAnelly's claim is inappropriate for a motion to correct sentence, and the trial court properly denied it.

In addition, we observe that McAnelly agreed to six consecutive one and one-half year sentences in his plea agreement. Even assuming that McAnelly's nine-year sentence

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[4] Specifically, Indiana Code § 35-50-1-2(c) provides in pertinent part:

> The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the [presumptive] sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

The presumptive term for a Class C felony is four years. Ind. Code § 35-50-2-6(a).

is improper because the six counts of check fraud arise out of a single episode of criminal conduct and therefore his sentence should be limited to four years, "[a] defendant may not enter a plea agreement calling for an illegal sentence, benefit from that sentence, and then later complain that it was an illegal sentence." *Lee v. State*, 816 N.E.2d 35, 40 (Ind. 2004) (quotation omitted). "[D]efendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy. Striking a favorable bargain including a consecutive sentence the court might otherwise not have the ability to impose falls within this category." *Id.* (quotation omitted). McAnelly received a substantial benefit from his plea agreement. That is, he received the presumptive sentence for each of the six counts of check fraud. After striking this favorable bargain, McAnelly cannot now be heard to complain about his sentence. *See id.*; *see also Stites v. State*, 829 N.E.2d 527, 529 (Ind. 2005).[5]

Affirmed.

BAILEY, J., and BARNES, J., concur.

[5] McAnelly also argues on appeal that the Jackson Circuit Court denied him due process of law, apparently because it allowed the sentence in the first place. Not only is McAnelly's argument on this issue not cogent, but also he relies on *Sinn v. State*, 609 N.E.2d 434 (Ind. Ct. App. 1993), *trans. denied*, which our Supreme Court overruled in *Lee*, 816 N.E.2d at 40. *See Stites*, 829 N.E.2d at 529. As such, McAnelly's argument fails.